

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

M. MARY FROMMER, Individually and as Administratrix
of the Estate of Robin D. Frommer, Deceased,

Plaintiff,

v.

JUAN C. RAMIREZ-BENJUMEA,
DOLEX TRANSPORT, INC.,

Defendants.

**DECISION
and
ORDER**

05-CV-541A(F)

In this wrongful death action, B.B.X. Inc. ("B.B.X.") moves to intervene pursuant to Fed.R.Civ.P. 24(a) and (b) ("Rule 24 (___)"). Based on a consideration of the moving papers and Plaintiffs' opposition thereto, the court finds for the reasons and authorities stated in B.B.X.'s moving papers that the motion should be granted pursuant to Rule 24(b).¹ Given on the allegations in by Plaintiffs' Complaint and B.B.X.'s proposed complaint, recovery for both Plaintiff and B.B.X. will turn on whether Defendants are liable to Plaintiffs and B.B.X. based on Defendant Ramirez-Benjumea's negligence as the driver of Defendant Dolex Transport, Inc.'s truck. That differing legal standards are applicable to the award of damages to Plaintiffs' and B.B.X.'s claims does not detract from this common and fundamental issue of fact. As B.B.X. notes, a further action by B.B.X. could be instituted and would be likely consolidated pursuant to Fed.R.Civ.P. 42. The case is relatively young and the court fails to see how litigation on the merits of Plaintiffs' claims will be prejudiced if intervention by B.B.X. is allowed at this time. Indeed, it is entirely possible that settlement will be facilitated, to Plaintiff's benefit, upon such intervention.

¹ Defendants do not oppose the motion (Doc. No. 15).

CONCLUSION

Based on the foregoing, the motion to intervene (Doc. No. 10) is GRANTED.

B.B.X.'s Intervenor Complaint shall be served and filed not later than August 11, 2006;

Defendants' answers shall be filed and served not later than August 25, 2006. A further conference pursuant to Fed.R.Civ.P. 16(b) will be scheduled by the court.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: July 21, 2006
Buffalo, New York